

Appeal of the Santa Rita Valley Ag., Inc. Cannabis Cultivation Land Use Permit

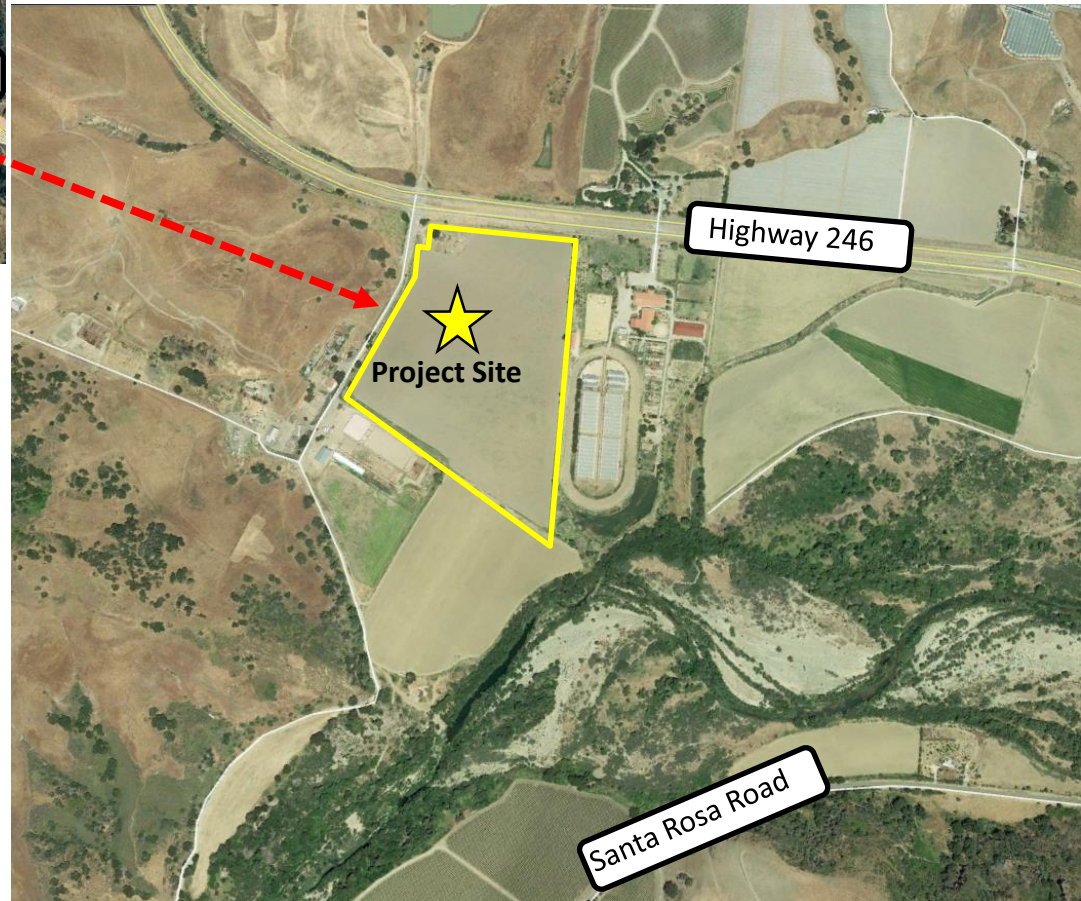
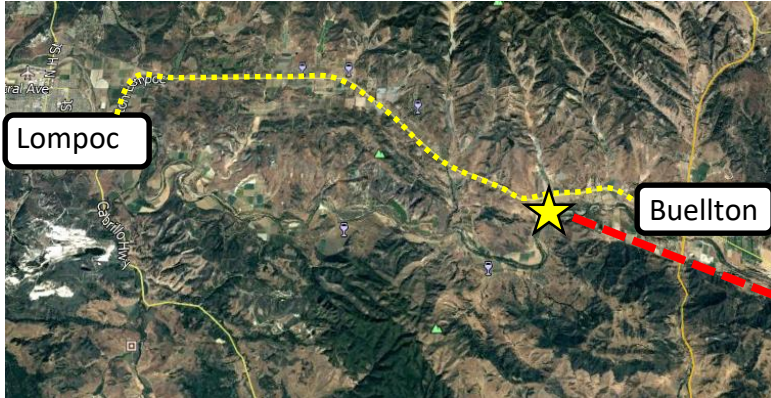
Case Nos. 19APL-00000-00032 and
18LUP-00000-00351

Santa Barbara County Board of Supervisors
March 10, 2020



Planning and Development Department
Nereyda (Rey) Harmon, Planner

Vicinity Map



Background

- February 27, 2018: **Board of Supervisors adopts Cannabis Regulations**
- May 6, 2019: **Land Use Permit (LUP) for 37 acres of outdoor cannabis cultivation approved by the Planning & Development Director**
- May 15, 2019: **LUP Appeal to the Planning Commission filed**



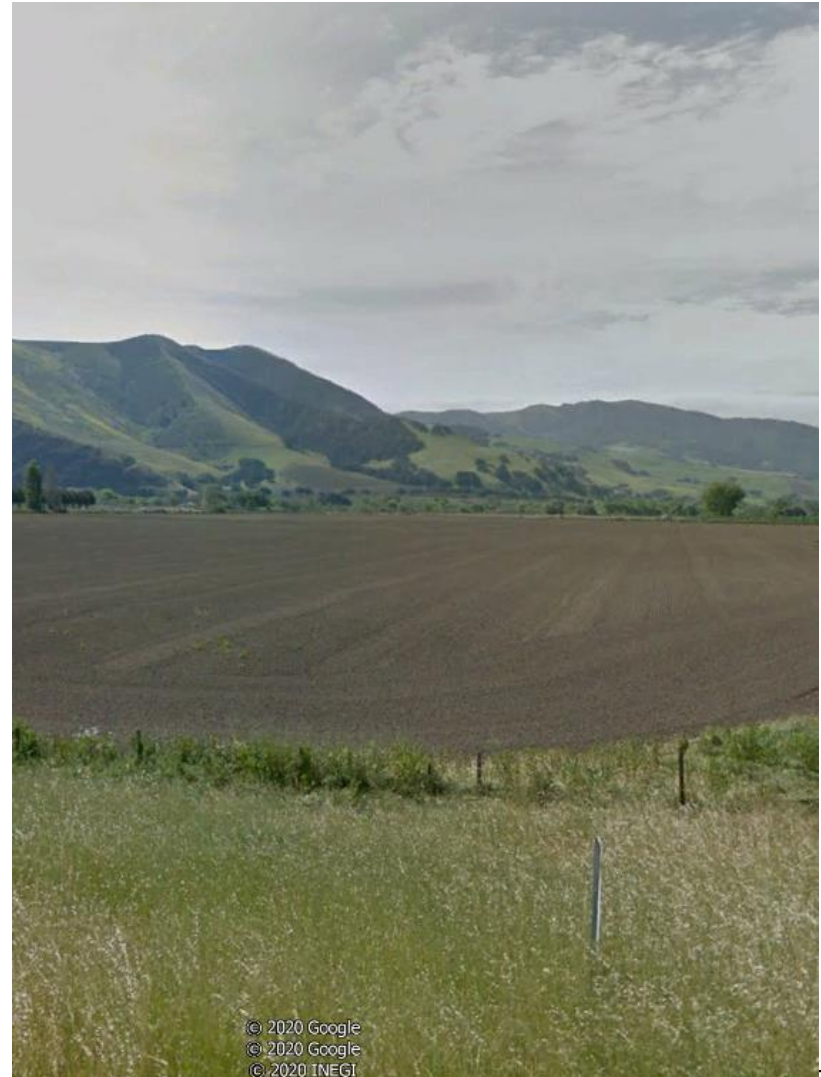
Background Continued

- November 6, 2019: **Planning Commission denies the appeal and grants de novo approval of the LUP for 12.75 acres of cannabis cultivation**
- November 18, 2019: **LUP Appeal to the Board of Supervisors is filed**



Proposed Project

- **32 acres of outdoor cannabis cultivation**
- **No processing on-site**
- **4-5 regular employees to run the operation**
- **40-50 agricultural employees during harvest periods**
- **2-3 security personnel**
- **Hours:**
 - Monday through Saturday
 - 6:00am – 6:00pm
- **New screening/landscaping proposed**



Landscaping Plan



Current View from Hwy 246



Landscaping Visual Rendering



Appeal Issue #1

Appellant

- CEQA checklist produced for the proposed project is not sufficient
- County should have prepared an initial study, an independent environmental impact analysis, or a tiered EIR

Staff Response

- The previously certified PEIR provides adequate environmental review and no subsequent environmental review is needed
- No new significant environmental effects or substantial increases in severity of previously identified significant effects

Appeal Issue #2

Appellant

- i. Aesthetic and Visual Resources:
 - PEIR did not analyze or examine issues related to the visual impacts specific to the project site and specific to Highway 246
 - County's General Plan contains preservation measures for eligible scenic routes and that the County did not examine impacts specific to Highway 246

Staff Response

- i. Aesthetic and Visual Resources:
 - PEIR addresses the impacts that would be associated with the proposed project, and identified mitigation measures
 - Landscape Plan is adequate and complies with development standards that were produced from identified mitigation measures
 - Highway 246 is neither designated nor eligible as a scenic highway

Appeal Issue #2 Continued

Appellant

- ii. Agricultural Resources:
 - PEIR failed to analyze pesticide drift and its impacts on ag resources
 - Specific impacts from cannabis cultivation that occurs near vineyards with regard to the effect of terpenes on grapes

Staff Response

- ii. Agricultural Resources:
 - Can apply pesticides provided they follow the application requirements to prevent drift
 - Lack of scientific evidence to corroborate whether wine grape absorb cannabis terpenes

Appeal Issue #2 Continued

Appellant

- iii. Air Quality:
- PEIR did not examine whether the project would create odors, the intensity of odors, nor how many people would be impacted by odors emanating from the project site
 - PEIR did not adequately address air quality impacts regarding the formation of ground level ozone

Staff Response

- iii. Air Quality:
- PEIR evaluated the air quality impacts of the Program, and the proposed project was an activity that was anticipated to occur with adoption of the Program
 - PEIR found that emissions from operations of cannabis activities could result in an increase of criteria pollutant, including ozone
 - The above impacts were determined to be significant and unavoidable and the Board adopted a Statement of Overriding Considerations

Appeal Issue #2 Continued

Appellant

- iii. Air Quality:
 - Cannabis plants also emit VOCs and the Appellant cites a letter from Patricia Holden, Ph.D. that says terpenes emitted from cannabis plants are categorized as biogenic
 - Impacts from cannabis cultivation occur near vineyards with regard to the effect of cannabis terpenes on grapes
 - PEIR failed to examine whether the project, in conjunction with other cannabis operations, would have an impact on regional and localized air quality

Staff Response

- iii. Air Quality:
 - All living things emit biogenic VOCs. Roses, orange trees, rosemary, pine trees, and oak trees are all significant VOC emitters
 - The presence of VOCs was known at the time the PEIR was prepared. VOCs and terpenes are discussed in the PEIR and were considered as part of the analysis of air quality impacts
 - The PEIR specifically states that combined with pending and future projects in the County, operation of such development would increase operation generated emissions and would expose residents to ROC and NOX emissions

Appeal Issue #2 Continued

Appellant

- iv. Land Use Compatibility:
Due to alleged environmental impacts to:
- aesthetic and visual resources
 - agricultural resources
 - air quality

Staff Response

- iv. Land Use Compatibility:
- PEIR evaluated these impacts, the Board of Supervisors certified the PEIR, and the Board adopted a Statement of Overriding Considerations to justify approval of the Program
 - The 30-day statute of limitations to challenge the adequacy of the PEIR has expired

Appeal Issue #2 Continued

Appellant

- v. Cumulative Impacts of Project Clusters:
- Analysis in the PEIR did not contemplate large-scale cultivation nor clustering of cannabis cultivation along Highway 246 with regard to impacts to aesthetic and visual resources

Staff Response

- v. Cumulative Impacts of Project Clusters:
- PEIR acknowledged that cumulative impacts associated with the Cannabis Program would include potential changes to scenic resources and existing visual character and noted that future cannabis cultivation would likely occur along Highway 246
 - PEIR acknowledged that full buildout of cannabis-related projects would create a significant, unavoidable cumulative impact to aesthetic and visual resources

Appeal Issue #2 Continued

Appellant

- v. Cumulative Impacts of Project Clusters:
- PEIR failed to examine whether the project, in conjunction with other cannabis operations, would have an impact on regional and localized air quality
 - Drift issues may have a significant adverse effect on adjacent agricultural resources

Staff Response

- v. Cumulative Impacts of Project Clusters:
- The PEIR specifically states that combined with pending and future projects in the County, operation of such development would increase operation generated emissions and would expose residents to ROC and NOX emissions
 - Existing agricultural operations would have the ability to continue to apply pesticides to their crops as necessary and as allowed

Appeal Issue #3

Appellant

Appellant asserts that mitigation required by the PEIR (for traffic and visual impacts) is not properly included in the conditions of approval for the proposed project

Staff Response

- PEIR evaluated the direct and indirect impacts, as well as the project-specific and cumulative impacts, that would result from the implementation of the Program
- PEIR identified a number of significant impacts and set forth feasible mitigation measures that were included as development standards and requirements in the land use and licensing ordinances

Appeal Issue #3 Continued

Staff Response

- i. Traffic and Noise Mitigation:
 - Applicant submitted a Site Transportation Demand Management Plan (STDMP) (Attachment 13 of the BAL) that addresses the requirements of the LUDC
 - Condition No. 9 (Attachment 2 of the BAL) states that the Applicant shall demonstrate to P&D compliance staff that all components of the approved STDMP are implemented
 - Noncompliance with the STDMP could result in Permit Compliance enforcement actions

Appeal Issue #3 Continued

Staff Response

i. Visual Impacts Mitigation:

- Applicant submitted a Landscape and Screening Plan (Attachment 10 of the BAL) that addresses the requirements of the LUDC
- Condition No. 7 (Attachment 2 of the BAL) requires that prior to the issuance of any permits, a performance security shall be filed with the County to ensure installation and maintenance of the landscaping for two years
- Landscaping shall be maintained for the life of the project, and Permit Compliance staff shall monitor throughout the life of the project

Appeal Issue #4

Appellant

- PEIR fails to provide appropriate mitigation to minimize impacts resulting from odor and associated land use issues
- Appellant asserts that there are impacts resulting from odor and associated land use issues that were not addressed adequately in the PEIR or in the ordinance that are the result of clustered cannabis cultivation

Staff Response

- The impacts associated with odor from the proposed project were evaluated as part of the PEIR, and consequently, no additional environmental analysis of the proposed project's impacts are required
- PEIR identified unavoidably significant impacts, including (but not limited to) the following impact regarding odor: "Impact AQ-5. Cannabis activities could potentially expose sensitive receptors to objectionable odors affecting a substantial number of people."

Appeal Issue #5

Appellant

- Project fails to comply with the County's General Plan, the spirit of the Santa Ynez Valley Community Plan (SYVCP), and with Air Pollution Control District (APCD) Rule 303

Staff Response

- Proposed project conforms to the applicable provisions of the Comprehensive Plan, and the LUDC
- According to APCD District Rule 303, APCD does not regulate odor for cannabis operations related to the growing and harvesting of cannabis

Appeal Issue #6

Appellant

- The County failed to provide the Appellant with reasonable notice regarding project approval
- The County refused to provide the Appellant or his legal counsel with copies of key project plans, mitigation measures, and permitting requirements
- CEQA Checklist was modified 80 days after project approval
- Late receipt of the PC staff report

Staff Response

- Staff and the Applicant satisfied all applicable noticing requirements
- Project plans are intellectual property of architects and designers and cannot be sent to other parties without explicit authorization; plans are available to review at P&D offices
- All cannabis mitigation measures and cannabis permitting requirements are available online
- CEQA Checklist was updated solely to clarify that the structure is sited to avoid prime soils
- All citizens' due process rights were protected and respected

Appeal Issue #7

Appellant

- Appellant alleges that the project requires the approval of a CUP and improperly was approved with a LUP, despite the identified routes of project ingress and egress passing through EDRNs

Staff Response

- The proposed project site is not adjacent to an EDRN and/or Urban Rural boundary
- The proposed project site is not located within an EDRN
- The site has two means of access, as described in the Site Transportation Demand Management Plan, one of which does not require the use of a roadway located within an EDRN
- Therefore, according to the LUDC, the project does not require approval of a CUP

Other Appeal Issues

Appellant

- Absence of a temporal limit on the cultivation entitlement
- Unfair Planning Commission hearing
- Findings not supported by substantial evidence and lack specificity

Staff Response

- Allegation is with regard to County Code requirements and is not specific to this project
- All citizens' due process rights were protected and respected during the Planning Commission hearings of August 8, 2019, and November 6, 2019
- The findings included as Attachment 1 specify how the proposed project conforms to the applicable provisions of the Comprehensive Plan and the LUDC

Recommended Actions

- a) Deny the appeal, Case No. 19APL-00000-000032
- b) Make the required findings for approval of the project, Case No. 18LUP-00000-00351, including CEQA findings
- c) Determine that the previously certified PEIR constitutes adequate environmental review and no subsequent EIR or Negative Declaration is required pursuant to CEQA Sections 15162 and 15168 (c)(2) of the State CEQA Guidelines
- d) Grant *de novo* approval of the project, Case No.18LUP-00000-00351, subject to the conditions included as Attachment 2 of the BAL

Recommended Actions (2)

- a) Deny the appeal, Case No. 19APL-00000-000032
- b) Make the required findings for approval of the project, Case No. 18LUP-00000-00351, included as Attachment 1 to the Board memo dated March 9, 2020, including CEQA findings
- c) Determine that the previously certified PEIR constitutes adequate environmental review and no subsequent EIR or Negative Declaration is required pursuant to CEQA Sections 15162 and 15168 (c)(2) of the State CEQA Guidelines
- d) Grant *de novo* approval of the project, Case No.18LUP-00000-00351, subject to the conditions included as Attachment 2 of the Board memo dated March 9, 2020

Thank You

Questions?

